IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

APPEAL NO. 371 OF 1998
IN
SUMMONS FOR JUDGMENT NO.615 OF 1996
IN
SUMMARY SUIT NO. 1032 OF 1996

Dalla Izazat Hussein
of Mumbai Indian Inhabitant residing
at Akash Apartment, Flat No.1005,
Sane Guruji Marg, Agripada, Mumbai
400 011 and carrying on business at
C/o. M/s.Amizarna Oil Division &
M/s.Dalla Associates , 411,
Sharda Chambers No.1, 31,
Keshavji Naik Road, Bhat Bazar,
Mumbai 400 009.

Appellant
(original Defendant)

versus

Bank of Baroda
a body corporate constituted under
the Banking Companies (Acquisition
and Transfer of Undertakings) Act,
1970 having its head office at
Mandvi-Baroda in the Gujarat State
and Central Credit Card Department
at Esperance, Shahid Bhagat Singh
Marg, Colaba, Mumbai 400 039.

Respondents
(original Plaintiffs)

Mr. V. J. Shah i/b. M/s. L. C. Tolat & Co. for
the appellant.

**CORAM : R. M. LODHA &**
**J.P. DEVADHAR,JJ**

**DATED : 19th August 2004**

**ORAL JUDGMENT (Per R.M. Lodha,J.)**

Heard.

2. Though the learned trial Judge did not find merit in the defence set up by the appellant-defendant in opposition to the summons for judgment, yet permitted the appellant-defendant to defend the suit on depositing the sum of Rs.50,000/- within the time granted therein. The appellant-defendant having not been granted unconditional leave is in appeal before us.

3. The learned counsel for the appellant-defendant submitted that in the particulars of claim no particulars have been provided by the plaintiffs. The details of the account have also not been given. The learned counsel would submit that the appellant-defendant utilised the subject credit card only once for withdrawal of the amount of Rs.10,000/-. Besides that the defendant did not utilise the subject credit card and no purchases were made thereunder and, therefore, the learned trial Judge ought to have been granted unconditional leave.

4. It is not in dispute that somewhere in the month of February 1992 the appellant-defendant was issued a credit card by the plaintiff-respondent. According to the plaintiff-respondent between 21st May 1992 and 16th February 194 the appellant utilised the said credit card by availing the credit card from various member services

and also by withdrawing the cash from the plaintiff's branches. The appellant-defendant made part payment from time to time and last of such payment was made on 19th January 1994. According to the plaintiff-respondent as on 1st April 1994 a sum of Rs.48,549.54 was outstanding on appellant-defendant's card. As per the agreement, the appellant-defendant was liable to pay normal service charge of 2% per month and where the credit limit exceeded Rs.10,000/-, additional service charge of 1% per month was leviable. Various demands were made by the plaintiff-respondent, but the appellant-defendant did not heed to such demand necessitating the filing of the summary suit.

5. Save and except the bald statement made by the appellant-defendant that no purchases were made on the card or credit card was availed of except withdrawing the sum of Rs.10,000/-, there is nothing on record to indicate that at any point of time, the appellant-defendant challenged the statement/monthly bills forwarded by the plaintiff-respondent to the appellant-defendant. Apparently, therefore, the defence set up by the appellant-defendant does not appear to be bonafide and acceptable. The learned trial Judge, in the circumstances, cannot be said to have erred in not accepting the defence of the appellant-defendant. Yet, the learned trial Judge showed mercy by permitting the

appellant-defendant to contest the suit by depositing a sum of Rs.50,000/-. The order passed by the learned trail Judge is eminently just and proper and calls for no interference.

6. The appeal is dismissed.

7. On the oral motion of the learned counsel for the appellant, the time of four weeks from today is granted for depositing the sum of Rs.50,000/- as directed in the impugned order dated 15th October 1997.

8. No costs.

**(R.M. LODHA, J.)**

**(J.P. DEVADHAR,J.)**